

11740-PAJ

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,**

Plaintiff,

v.

ADVANCE OCEAN INC., NIPPON YUSEN KAISHA, NYK (NORTH AMERICA) INC., BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendants.

07 CIV 6421 (PAC) (THK)

• •

• • • •

**DECLARATION OF
ESTHER HELEN LEE IN
SUPPORT OF ADVANCE
OCEAN INC.'S MOTION TO
DISMISS PURSUANT TO
FED. R. CIV. P. 12(B)(2) & (6)**

• • • • X

Esther Helen Lee declares as follows:

1. I am and was at all times relevant the Director of defendant, Advance Ocean Inc. (“Advance”), and I am fully familiar with the following facts. I submit this Declaration in support of Advance’s motion to dismiss the complaint for lack of personal jurisdiction and failure to state a claim.

2. The Amended Complaint alleges that a cargo of insulators was damaged “moving from Elwood, Illinois to Los Angeles,” and that the defendants, including Advance, are “operators of a railroad doing business as common carriers by rail in interstate commerce.” It is my understanding that the cargo was allegedly damaged as the result of a train derailment somewhere between Illinois and California while being transported by defendants Burlington Northern Santa Fe Corporation, BNSF Railway Company, and the Burlington Northern and Santa Fe Railway Company (hereafter

collectively “BNSF”).

3. Advance is not a railroad operator. It is a California corporation with an office located at 17870 Castleton St., City of Industry, California, which is licensed as an Ocean Transportation Intermediary by the Federal Maritime Commission. As an Ocean Transportation Intermediary, Advance dispatches shipments from the United States by booking space with ocean common carriers and by preparing shipping documents on behalf of its clients.

4. Advance does not maintain either an office or an employee in New York, is not licensed or authorized to do business in New York, and does not have any bank accounts or property within the state. It does not maintain a phone listing in New York, and it does not promote its interests through agents or other individuals located in New York. There is also no relationship whatsoever between New York State and any of the facts underlying this lawsuit.

5. Advance’s only involvement with the shipment at issue was that it made arrangements to ship the cargo via merchant vessel to Thailand on behalf of, and at the request of, the cargo owner’s Illinois freight forwarder, Berardino & Associates (“Berardino”). On June 7, 2006, Advance received an email from an individual named Bob Mohn who stated that he worked for Berardino and that he was looking to ship a cargo of telecommunications insulators from Chicago to Bangkok on behalf of his customer, Maclean Power Systems (“Maclean”). *Exhibit A.*

6. On June 9, 2006, Advance arranged to have the cargo shipped with defendant NYK Line (North America) Inc. (“NYK”), a global ocean carrier. NYK issued Advance a “Booking Fax Confirmation” which indicated that NYK would transport the insulators in seven containers from the Joliet Logistics rail park in Elwood, Illinois, to the port of Los Angeles, California, where the containers would then be loaded onto a NYK merchant vessel for carriage to Laem Chabang, Thailand. *Exhibit B.* Upon information and belief, Berardino arranged to have the cargo transported from Maclean’s facility to the rail park, and NYK arranged rail carriage with defendants.

On or about June 12, 2006, Advance issued a “Booking Confirmation” which identified Berardino as “Shipper,” “Nippon Yusen Kaisha,” *i.e.* NYK, as the “Carrier,” and the vessel as the “NYK PHOENIX V.” The Booking Confirmation further contained the following information under the heading “Remarks;” “PLS USE CARRIER BOOKING# FOR PICK UP AND RETURN.” *Exhibit C.*

7. Given the foregoing, it cannot be reasonably disputed that Advance did not act as either a rail carrier or any other common carrier with respect to this shipment, and that its responsibilities were limited to arranging ocean transport via NYK and preparing the Booking Confirmation for Berardino. There is absolutely no conceivable set of circumstances whereby Plaintiff could allege that Advance committed

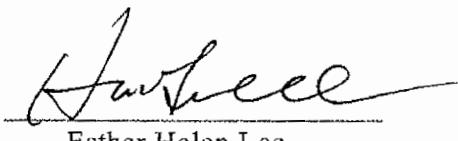
any act of negligence which could have contributed to the cargo damage, nor is there any such allegation in the complaint.

8. Moreover, given the total lack of any nexus between the underlying transaction and the State of New York, it is respectfully submitted that this court lacks personal jurisdiction over Advance.

9. It is respectfully submitted that the court grant Advance's motion to dismiss in its entirety.

I declare under penalty of perjury that the above is true and correct.

Dated in Rosemead, California on January 31, 2008



Esther Helen Lee

tracyl@aoila.com

From: "Bob Mohn" <rmohn@berardino.net>
To: <tracyl@aoila.com>
Sent: Wednesday, June 07, 2006 2:27 PM
Subject: RE: Upcoming booking

Tracy:

My name is Bob Mohn and I am with the forwarder Berardino & Associates in Illinois. I have a customer of mine, Maclean power Systems, that will be requiring 5-6 20' and 40' cntrs on a shipment they have going to Bangkok that requires shipment on a Thai Flag vessel. Can you provide me with 20' and 40' rates from Ramp Chicago to Bangkok port covering insulators used in the telecommunications industry.

Can you please provide me with the requested rates.

Thank you very much
Bob Mohn

EXHIBIT A



NYK
LINE

NYK LINE (NORTH AMERICA) INC.

TO: TRACY
FROM: LISA

15: :27

BOOKING FAX CONFIRMATION

BOOKING NUMBER: BOI C 9613 DATE BOOKED: 6/09/06
BOOKED BY: SHPR. NYK BOOKING REP: LISA
SHIPPER: ADVANCE OCEAN INC. FORWARDER: SAME
SHIPPER REF#:

CARGO ROUTING INFORMATION

VESSEL: NYK ATLAS VOYAGE: 20
MOVE TYPE: CY / CY
CONTAINER PICK UP PLACE: JOLIET LOGISTICS PARK
26664 SOUTH BASELINE ROAD
ELWOOD IL 60421

DATE TO PICK UP: 6/12/06 CUTOFF DATE: 7/10/06
NYK PLACE OF RECEIPT: JOLIET LOGISTICS PARK
26664 SOUTH BASELINE ROAD
ELWOOD IL 60421

LOAD: LOS ANGELES, CA DISCH: LAEM CHABANG, THAILAND P O D: LAT KRBANG THAILAND
ETD: 7/18/06 ETA: 8/07/06 E T A: 8/08/06

BOOKED CARGO INFORMATION

NO. OF CONTAINERS: 7 SIZE: 40 TYPE: DRY
COMMODITY: INSULATOR CARGO WEIGHT 133 KTS
HAZARDOUS CARGO Y/N: N OVERDIMENSIONAL CARGO Y/N: N

OTHER BOOKING INFORMATION

B/L ISSUE OFFICE: BOISE B/L SUBMT OFFICE: BOISE
EX-DECSUBMT OFFICE:

NYK COMMENTS:

ROLLED PER YOLF REQUEST. PER OUR CONVERSATION, THIS BKG HAS ROLLED TOO
MANY TIMES. PLEASE ADVISE YOUR CUSTOMER THAT YOU WILL NOT BE ABLE TO ROLL
THIS AGAIN. NEXT TIME IT WILL HAVE TO BE CANCELED.

THANK YOU FOR SHIPPING WITH
NYK LINE: (800)-695-7447

NYK ACCEPTS THE INFORMATION YOU HAVE PROVIDED AND ITS ACCURACY. SHOULD ANY ERROR
DETECTED IN THIS FAX DOCUMENT, PLEASE NOTIFY US IMMEDIATELY SO WE MAY ARRANGE FOR
CORRECTIONS.

EXHIBIT B

**ADVANCE OCEAN, INC.**

8232 GARVEY AVE, SUITE 201, ROSEMEAD, CA 91770 - U.S.A

Tel: 626-571-1988 Fax: 626-571-6568

Email: info@aoila.com

Total Pages:

BOOKING CONFIRMATION

Revised On: 07/10/2006

By: TRACY / EXT#115

**BOOKING DATE:** 06/12/2006**SHIPPER:** BERARDINO & ASSOCIATES, INC.

188 INDUSTRIAL DRIVE SUITE 427

ELMHURST, IL 60126

Tel: 630-834-2670 Fax: 630-834-2696 Attn: BOB MOHN

NOTIFY PARTY:**OUR BK #:** LAXBKK3453**EXPORT REF#:** 0607TMN058**CARRIER:** NIPPON YUSEN KAISHA**YOUR REF#:****CARRIER BK#:** BOIC9613**VESSEL/VOY:** NYK PHOENIX V. 18**DESTINATION:** BANGKOK**RECEIPT:** CHICAGO, IL., U.S.A.**CUT-OFF DATE:** 07/17/2006 04:00 PM**LOADING:** LOS ANGELES, CA**E.T.D. DATE:** 07/25/2006**DISCHARGE:** BANGKOK**E.T.A. DATE:** 08/15/2006**DESCRIPTION AS DESCRIBED BY YOU...****COMMODITY:** INSULATOR**NO. OF PKGS:****MEASUREMENT:** 0 CBM 0 CFT**WEIGHT:** 0 kgs 0 lbs**CONTAINER TYPE:** 7 x 40**PICKUP AT:** JOLIET LOGISTICS PARK**RECEIVING TERMINAL:** JOLIET LOGISTICS PARK
26664 SOUTH BASELINE ROAD
ELWOOD, IL 60421
Tel: 815-424-2200

0/0
E10² S A 21
C7B¹ G 21
WV¹ N 16 T 1
J 124 1

REMARKS: PLS USE CARRIER BOOKING# BOIC9613 FOR PICK UP AND RETURN.

NYK JUST ADVISED ME THAT THE EARLIER DATE TO RETURN LOAD CONTAINERS BACK TO RAMP IS ON 6/30 WHICH IS 72 HOURS PRIOR TO CUT OFF DATE.



7/14

**EXHIBIT****C****NOTE:** * SHIPPER'S "EXPORT DECLARATION" REQUIRES THREE DAYS PRIOR TO VESSEL SAILING.

1. PLEASE DELIVER THE CARGO TO OUR RECEIVING TERMINAL BEFORE THE CUT-OFF DATE.

2. PLEASE ADVISE YOUR CARRIER BOOKING NUMBER TO RECEIVING TERMINAL UPON DELIVERY OF THE SHIPMENT

Thank you for using our service!